उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 693 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.693/2002

APPELLANT		**Enkat, @ Venkat Prasad Pani, aged about 36 years, Occupation – Working as daily wager, s/o Narsingh Pani, r/o Nayapara, Kirti Nagar, P.S. Tarbahar, Tahsil & Distt. Bilaspur (C.G)**
		Versus
RESPONDENT		**State of Chhattisgarh through Police Station Tarbahar, Distt. Bilaspur (C.G)**

Appearance:

Shri Vinay Dubey, counsel for the appellant.

Shri Satish Gupta, Deputy Govt. Advocate, for the State.

D.B-: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(07.08.2007)

L.C. Bhadoo, J,

(1) This appeal is directed against the judgment of conviction and order or sentence dated 03.5.2002 passed by IVth Addl. Sessions Judge, Bilaspur, in Sessions Trial No.344/2000 whereby the learned Addl. Sessions after holding the accused appellant

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guilty for committing the murder of accused Rajendra Kumar Rajak, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 6 months.

(2) The case of the prosecution, in brief, is that the deceased Rajendra Rajak was residing along with his mother, brother and sisters in the quarter of nurse colony. In the adjacent house the accused appellant Venkat Pani alongwith his wife Manju Pani was residing. They used to visit each others house. During this period, the deceased Rajak developed love affairs with Manju Lata. The accused appellant came to know about the love affairs between his wife and Rajak, therefore, he used to quarrel and beat his wife Manju Lata. The accused took a loan of Rs.800/- from the deceased. At about 8.30 p.m. in the night of 10.7.2000 the accused under a plan went to the house of deceased. He enquired about Rajendra Rajak. Rajendra was not at his residence but his brother, mother and sister were there. They replied that he must be coming. After a while, Rajendra Rajak came. The accused asked him that he will return the loan amount of Rs.800/-, after taking the same from his friend, therefore, he should accompany him. On this pretext, he took the deceased on his own Cycle. For about an hour, the deceased did not return to his house. In the meantime, the Municipal Counselor Moris Hell informed that the body of Rajendra Rajak is lying in a pool of blood on the corner of the road near Bungalow No.19, in front of Cultural Building

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Therefore, Raju Rajak went to the place of occurrence with a torch. He saw in the torch light that there was an injury on the palm of the right hand, there were two injuries on the right side of the neck (i.e. grievous injuries), as a result of which, the nerve of the neck was cut. The matter was reported by Raju Rajak in the police station Tarbahar under *Dehati Nalishi* Ex.P.15 as well as under *Merg Dehati* Ex.P.20 and *Merg* intimation Ex.P.21.

(3) Based on the above, the Station House Officer, Police Station Tarbahar registered the crime u/s 302 under Ex.P.22. The I.O. left for the place of occurrence. After giving notice to the *Panchas*, inquest Ex.P.6 was prepared on the body of deceased. The body was sent for postmortem examination to the District Hospital, Bilaspur, under Ex.P.1 where Dr. Arvind Shukla (P.W.1) conducted post mortem. He prepared the postmortem report Ex.P.2. He opined that the cause of death is shock, as a result of hemorrhage (due to injury to major blood vessels of neck on the right side). The knife in question was sent to the Doctor. The Doctor after examination, gave the report vide Ex.P.3. The site plan of place of occurrence Ex.P.5 was prepared by Halka Patwari. The blood stained soil under Ex.P.8 and plain soil under Ex.P.9 was seized from the place of occurrence. While in custody, the accused gave a memorandum Ex.P.10 regarding the place where he kept the cycle and knife and in pursuance of that, he got recovered knife under Ex.P.11. One photograph, one ring, one receipt, one small steel box were seized under Ex.P.12. One Terri coat shirt, full pant of

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the accused were also seized under Ex.P.13. The site plan Ex.P.16 was prepared by the I.O. The seized articles were sent for chemical examination to Forensic Science Laboratory under Ex.P-27 from where report Ex.P-28 was received. The Serologist Report Ex.P-29 was received. After completion of investigation, the charge sheet was filed against the accused in the Court of C.J.M., Bilaspur, from where the learned 4th Addl. Sessions Judge received the case on transfer.

(4) The prosecution in order to establish the charge against the accused examined 17 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C., in which he denied the material appearing against him in the prosecution evidence, pleaded that he is innocent and has been falsely implicated in this case.

(5) The learned Addl. Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforesaid.

(6) We have heard Shri Vinay Dubey, learned counsel for the appellant and Shri Satish Gupta, Deputy Govt. Advocate, for the State.

(7) At the outset, learned counsel for the appellant has not disputed the homicidal death of deceased Rajendra Kumar Rajak. Moreover, Dr.Arvind Shukla, (P.W.1) has stated that on 11.7.2000 he conducted the postmortem and found the following injuries:

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(i) An incised wound on right side of the neck, as a result of which major blood vessels were cut and the clotted blood was present.

(ii) An incised wound above the injury no.1 on the right side of the neck in size of 4 x 1cm x muscle deep.

(iii) There was a rectangular mark of abrasion over the chest on the right side just above the nipple.

(iv) Two fresh horizontally placed incised wounds over back of right hand, 3 cms apart from each other.

(v) Thyroid cartilage cut on right side.

The doctor opined that the cause of death was shock and hemorrhage on account of neck injury. In view of the above evidence, it is established that the death of deceased was homicidal in nature.

(8) As far as the complicity of the accused in crime in question is concerned, in this case there is no direct or ocular evidence. The whole case rests on the circumstantial evidence. As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter ***Dhananjoy Chatterjee –Vs- State of W.P. reported in (1994) 2 SCC 222***, which is quoted below:

"In a case based on circumstantial evidence, the circumstances from which the

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conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

(9) The prosecution has tried to establish the crime against the accused on the following circumstances.

(i) The deceased was seen alive with the accused just before his death

(ii) The weapon of offence i.e., the knife was recovered at the instance of the accused

(iii) The shirt of the accused was found stained with blood.

(10) <u>First Circumstance</u>

As far as the first circumstance is concerned, P.W.9 Reena Rajak has stated that on the fateful day, at about 8.30 p.m. in the night, she, her brother Raju, mother and both the sisters-in-law were at the residence. At that time the accused Venkat Pani came to their house. He inquired about Rajendra. When her brother

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Raju inquired from the accused as to what is the matter, then he replied that he has to return Rs.800/- to Rajendra. Therefore, accused waited for Rajendra at the residence. She offered tea to the accused. After some time, her brother Rajendra came and the accused inquired from her brother that how much money he has to pay him. On this, after calculating, her brother said that he has to pay Rs.1200/-. On which the accused said that he should take money tomorrow from his friend who is residing in bungalow yard. He further said that he should accompany him so that he can show him the house of his friend in bungalow yard, thereafter he took her brother with him. The above evidence of Ku. Reena Rajak is corroborated by the evidence of P.W.5 Smt. Asha Rajak, sister-in-law of Rajendra and wife of Raju, as also the evidence of Raju Rajak (P.W.6) who have categorically stated that the accused came and took Rajendra with him. In cross examination of these witnesses the defence has not been able to elicit any circumstance which may discredit the evidence of these witnesses regarding going of Rajendra with the accused on the fateful night at about 8.30 p.m.

(11) As far as connecting the accused with the crime in question based on the last seen theory is concerned, the Apex Court in the matter of ***Bodhraj @ Bodha and others –vs- State of Jammu & Kashmir, reported in (2002) 8 SCC 45*** has held that :

> "The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive

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together and when the deceased is found dead is so small, that possibility of any person other than the accused being the author of the crime becomes impossible. It would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together."

Similarly, in the matter of ***Subhas Chand –vs- State of Rajasthan (2002) 1 SCC 702*** the Apex Court has specifically held that last seen together must be near about the date and time of the incident. Merely on the basis of last seen, the accused person cannot be held guilty. The Apex Court further held that :

"……To constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were last seen together at the point of time in close proximity with the time and date of commission of crime...."

In the matter of ***State of Karnataka Vs. M.V. Mahesh reported in (2003) 3 SCC 353*** the Apex Court has held as under:

"…… Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that the victim Beena had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together...."

(12) In the matter of ***State of Goa –vs- Sanjay Thakran and another 2007(4) SBR 321*** the Apex Court held that there can be no fixed or straight jacket formula for duration and the time gap in

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this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is liable to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Therefore, in view of the judgment of the Apex Court in the matter of *State of Karnataka –vs- M.V. Mahesh (supra)* in order to connect the accused with the crime in question, merely seen last together is not enough. What has to be established in the case is definite evidence to indicate that the accused is the author of the crime in question. Apart from last seen evidence, there must be other circumstantial evidence and material on record through which an irresistible inference can be drawn that the accused was author of the crime in question.

(13) SECOND CIRCUMSTANCE

As far as the recovery of the knife at the instance of the accused is concerned, from the evidence of P.W.3 Morris Hell, P.W.4 Lakshman and P.W.15 the Investigating Officer K.M.S. Khan, it is established that the accused gave memorandum Ex.P.10 and in pursuance of that, he got recovered one knife under Ex.P.11.from the place indicated by the accused but as per the

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F.S.L. report there was no blood on the knife. However the Doctor has stated that the injury on the neck of the deceased was caused by a sharp and hard object, injury found on the neck of the deceased may be caused by the knife but there is no definite evidence in this case that in fact the knife in question was used in inflicting the injury on the neck of the deceased.

(14) THIRD CIRCUMSTANCE

As far as the blood stain on the shirt of the accused is concerned, P.W.17 D.S. Bais has stated that on 16.7.2000 the accused was arrested under Ex.P.14 and at about 4.35 p.m. the shirt and pant of the accused were took into possession by the I.O., under Ex.P.13 and I.O., P.W.15 K.M.S. Khan has also stated that the shirt in question was seized by him. The shirt was sent for chemical examination. As per the report Ex.P.28, the blood was found but there is no report that the blood was human blood and that too of the blood group of the deceased. There is no other circumstance to connect the accused with crime in question. Even if the above 3 circumstances are taken together, even then the prosecution has not been able to connect the accused with the crime in question beyond reasonable doubt for the reasons that there is no report that the blood which was found on the shirt of accused was human blood and that too of the blood group of the deceased. Similarly, no blood was found on the knife and as per the settled principle of law, merely on the basis of last seen theory the accused cannot be connected with the crime in question unless

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the last seen circumstance is corroborated by any other circumstance connecting the accused with the crime in question. Therefore, we are of the considered opinion that the finding of the trial court convicting the accused for commission of the offence u/s 302 for committing the murder of Rajendra Rajak is not based on legal, clinching and admissible evidence and the prosecution has utterly failed in connecting the accused with the crime in question based on the circumstantial evidence as per the principles mentioned in the earlier part of this judgment.

(15) Therefore, the finding of the trial Court cannot be sustained. In the result, the appeal succeeds and the accused is acquitted of the charge u/s 302 I.P.C. Consequently the sentence imposed upon the accused appellant is set aside. It is stated that the accused is in detention since 2000. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

/Rao/